IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5131 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI BABABHAI SOLANKI

Versus

REVABAI GENERAL HOSPITAL

Appearance:

1. Special Civil Application No. 5131 of 1993

MR PRABHAKAR UPADHYAY on behalf of MR MUKESH H RATHOD for Petitioner No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 11/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the order of the Labour Court, Ahmedabad passed on 21-1-1993 in Reference (LCA No.1002/1985) whereby the

Labour Court has awarded the retrenchment compensation, as well as additional compensation of Rs.3,000/- to the petitioner. However, the Labour Court has refused to grant any relief with regard to reinstatement with continuity of service and full backwages.

2) It is the case of the petitioner that the petitioner was appointed as Compounder in the respondent-Hospital with effect from 8-2-1976. At the time of recruitment, the respondent had verified the qualification and experience of the petitioner and after considering the same, the petitioner was appointed in service. The petitioner has worked for about 8 years as Compounder in the respondent-Hospital. However, the petitioner's service was terminated by the respondent-Hospital vide office order dated 15-11-1984 on the ground that according to recruitment rules for the post of Compounder, the petitioner was not qualified and also the work of the petitioner was not satisfactory. The petitioner was, therefore, given one months' notice pay along with termination order. However, no retrenchment compensation as envisaged under Section 25 (F) of the Industrial Disputes Act was given to the petitioner.

3) The petitioner has challenged the said termination order before the Labour Court in reference (LCA No.1002/1985) and the said reference was decided by the Labour Court on 21-1-1993. The Labour Court has in terms held that the termination order passed by the respondent-Hospital was bad and illegal as before terminating the services of the petitioner, retrenchment compensation under Section 25 (F) of Industrial Disputes Act was not paid to the petitioner. The Labour Court has further found that the termination order was passed on one of the grounds that the petitioner's work was not satisfactory. Before arriving at such conclusion, the respondent-Hospital has issued no showcause notice to the petitioner and no inquiry was ordered in the matter. The said order was, therefore, violative of the principles of natural justice. The Labour Court has in terms held that the petitioner was entitled for the reinstatement with continuity of service with full backwages of interim period. However, the Labour Court has further observed in its order that because of the amendment made in Pharmacy Act and the petitioner was not registered Pharmacist, the petitioner should not be allowed to be reinstated in service. The Labour Court has further held that the petitioner was not having proper vision due to difficulty in the eyes and there were about 15 and 17 minus numbers in the petitioner's eyes. Because of this,

the petitioner was not in a position to work in any other department of the respondent-Hospital. Considering all these aspects, the Labour Court has refused to grant any relief with regard to reinstatement of the petitioner with continuity of service and full backwages. The Labour Court has only awarded the retrenchment compensation and additional compensation of Rs.3,000/-. It is this order which is under challenge in the present petition.

4) Heard Mr.Prabhakar Upadhyay, learned advocate appearing for Mr.M.H.Rathod for the petitioner. Nobody appears on behalf of the respondent.

5) Mr.Upadhyay, learned advocate for the petitioner ha submitted that when the Labour Court has come to the conclusion that the order of termination is bad and illegal and the provisions of Section 25 (F) of the Industrial Disputes Act were not complied with by the respondent-Hospital before terminating the services of the petitioner, the petitioner should have been ordered to be reinstated with continuity of service and full backwages. Mr.Upadhyay has further submitted that the Labour Court has committed a patent error of law in not awarding the reinstatement with continuity of service and full backwages. The mistake committed by the respondent-Hospital in not granting, the retrenchment compensation as contemplated under Section 25 (F) of the Act should not be rectified by the Labour Court while awarding the said retrenchment compensation at the time of passing the award. If the order is bad and illegal the same is required to be quashed and set aside and all consequential benefits should be given to the petitioner. Mr.Upadhyay has further submitted that if the petitioner is not to be reinstated as Compounder in the respondent-Hospital, the petitioner should have been given another assignment in the respondent-Hospital. However, the same was also not done and straighway petitioner's services were terminated. The said termination order is, therefore, not tenable either in law or on merits and the same is required to be quashed and set aside.

6) In support of his submission, Mr.Upadhyay has relied on the decision of this Court in the case of S.R.Patel v. State of Gujarat and ors. reported in 1983 GLH 228, wherein it is held that once qualifications are accepted as satisfacotry, then employer cannot turn around and say that the qualifications are insufficient or that they were misled. There is no automatic confirmation on the probation period being over. If the

termination order attaches stigma or is by way of punishment then it is bad in law. Mr.Upadhyay has further relied on the decision of the Hon'ble Supreme Court in the case of Narendrakumar Chandla v. State of Haryana and ors., reported in AIR 1995, SC 519, wherein it is held that Article 21 protects the right to livelihood as integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the post he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties. Mr.Upadhyay has further relied on the decision of the Hon'ble Supreme Court in the case of Vikramaditya Pande v. Industrial Tribunal and another, reported in AIR 2001, SCW 310, wherein it was held that a Clerk is ordered to be reinstated in service once it was found that his services were illegally terminated in the past. The Hon'ble Supreme Court has, however, observed that having regard to the facts and circumstances of the case and taking note of the fact that the order of termination is passed way back on 19-7-1985, it is just and appropriate and in the interest of justice to give backwages only to the extent of 50%.

7) On the basis of the aforesaid judgements, Mr.Upadhyay has submitted that if at all reinstatement as Compounder is not possible, the respondent-Hospital be directed to assign any other work to the petitioner. He has further submitted that even if the reinstatement is not possible, looking to his eye sight, suitable compensation should be awarded to the petitioner so as to enable him to live his remaining life peacefully.

8) I have heard the learned advocate for the petitioner and also considered the facts stated and averments made in the memo of petition. I have gone through the award passed by the Labour Court. There is no dispute about the fact that the Labour Court has in terms held that the order of termination passed by the respondent-Hospital was bad and illegal, as at the time when the said order was passed, retrenchment compensation as envisaged under Section 25 (F) of the Industrial Disputes Act was not given to the petitioner. It is also an admitted position that the order of termination did contain the reference regarding the petitioner's services having not found satisfactory. However, before such stigmatic finding made in the termination order, no showcause notice was issued to the petitioner. After observing this, the Labour Court has observed that the order of termination was bad and illegal. However, at

the same time, the Labour Court has observed that because of the amendment made in the Pharmacy Act, which has come into effect from 1-9-1984, the petitioner could not work as a Compounder in the respondent-Hospital as he was not the registered Pharmacist and Labour Court has further found as a matter of fact that the petitioner was having weak eye sight and there were 13 and 15 minus numbers in the eyes of the petitioner and with such a low vision no person can work in any department. Considering these two aspects, the Labour Court has rightly come to the conclusion that no award can be passed for reinstatement with continuity of service and full backwages. However, because of the mistake committed by the respondent-Hospital, the Labour Court has directed the respondent-Hospital to award the retrenchment compensation and Labour Court has also found that the case of the petitioner further deserves for additional compensation and accordingly, the compensation of Rs.3,000/- was awarded to the petitioner. I do not find any infirmity in the order passed by the Labour Court so far as it relates to non-granting of relief of reinstatement with continuity of service and full backwages. The respondent-Hospital is a charitable institute and works for public cause. Because of the statutory provision the petitioner could not be allowed to continue as a Compounder in the respondent-Hospital and in any case, he has to leave the job as Compounder. Moreover, the petitioner's eye sight was also very weak and it was practically impossible for him to work in any other department of the respondent-Hospital. After having considered this point, the Labour Court has also found that the petitioner could not work in any other department. Since the Labour Court has come to the just and proper conclusion on the basis of the facts and evidence on record, the same cannot be interfered with by this Court by exercising powers under Article 26/227 of the Constitution of India. Having found that additional compensation awarded by the Labour Court to the extent of Rs.3,000/- is very meagre sum, considering the situation, as well as, age of the petitioner higher amount should be awarded for additional compensation which according to me should be Rs.10,000/-. The respondent-Hospital is, therefore, directed to pay an additional compensation of Rs.10,000/- over and above the retrenchment compensation, as well as compensation of Rs.3,000/- awarded by the Labour Court.

9) With above observations and directions, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.A.Puj, J.)

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